

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

CrL.MC.No. 4020 of 2006()

CC.474/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

PETITIONERS:/ACCUSED

- 1.ARAVINDAKSHAN
A.S.I., KOLLAM EAST POLICE STATION
KOLLAM**
- 2.MADANAN PILLAI
POLICE CONSTABLE, KOLLAM EAST POLICE STATION
KOLLAM**
- 3. KUNJU KRISHNA PILLAI
GENERAL MANAGER
VIJAYALEKSHMI CASHEW COMPANY, KOLLAM**

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENTS:

- 1.CHERUPUSHPAM
MAHESH BHAVANAM, KAVATTOOR CHERI, THRICAVOOR
KOLLAM**
- 2. MADHUSOODHANAN PILLAI
MAHESH BHAVANAM, KAVATTOOR CHERI, THRICAVOOR
KOLLAM**
- 3. STATE OF KERALA REP: BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/12/2006,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.BASANT.J

CrI.M.C No. 4020 OF 2006

Dated this the 14th day of December 2006

ORDER

Though various pleas are raised, at the end of the submissions made by the learned counsel for the petitioner, the request made is short. He prays that the learned Magistrate may be directed to consider the petitioner's application for discharge under Section 245 of the Cr.P.C

2. Cognizance has been taken on the basis of a private complaint of the offences punishable inter alia under Section 451 and 380 read with 34 of the I.P.C. The learned counsel for the petitioners submit that the cognizance is itself bad for various reasons. Mixed questions of facts and law will have to be considered. The learned counsel for the petitioner submits that the petitioners will be satisfied that if there will be a direction to the learned Magistrate to consider their prayer for discharge under Section 245 (2) or 245 (1) as the case may be.

3. Needless to say any person who feels that cognizance has been taken of a warrant offence against him on the basis of a private complaint is certainly entitled to urge before the learned Magistrate that he

has got to be discharged at any stage under Section 245 (2) of the Cr.P.C. or at the end of the enquiry under Section 244 of the Cr.P.C. Petitioner, needless to say, shall have such right .

4. In the result this Crl.M.C is allowed in part giving option to the petitioner which is available to them under Section 245 (1) or 245 (2) of the Cr.P.C to claim discharge.

5. The learned counsel for the petitioners submits that if personal presence of the petitioners insisted till a decision of the question of charge is taken, that would result in great prejudice hardship and loss to the petitioners. Petitioners are entitled to apply for exemption and the learned Magistrate must consider such application for exemption in accordance with law and expeditiously. No specific directions are appear to be necessary

R.BASANT, JUDGE

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